

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL FREDERICK KRONE,

Petitioner,

vs.

T.L. GONZALEZ, Warden *et al.*,

Respondents.

Case No. 11cv1047-DMS (WMc)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION,  
DISMISSING PETITION, AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

Petitioner Daniel Frederick Krone, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. Section 2254 challenging his conviction and sentence for assault and two counts of second degree murder. The petition was referred to United States Magistrate Judge William McCurine, Jr. for a report and recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.1(d). Respondents filed a motion to dismiss based on the statute of limitations. On January 19, 2012, the Magistrate Judge issued a Report and Recommendation, recommending to grant Respondents' motion and dismiss the petition as time barred.

Petitioner timely objected to the Report and Recommendation. Respondents did not file a response. In reviewing a magistrate judge's report and recommendation, the district court "shall make a *de novo* determination of those portions of the report . . . to which objection is made," and "may

1 accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate  
2 judge." 28 U.S.C. § 636(b)(1).

3 Upon *de novo* review of the Report and Recommendation and Petitioner's objections, the  
4 objections are overruled. Even if Petitioner is given the benefit of equitable tolling, the petition was  
5 filed more than nine years after the expiration of the statute of limitations. (See Report and  
6 Recommendation at 4-5.) To the extent Petitioner argues Respondents' motion should be denied  
7 based on his actual innocence, an issue not addressed in the Report and Recommendation, his  
8 conclusory assertions do not meet the standard set forth in *Lee v. Lampert*, 653 F.3d 929 (9th Cir.  
9 2011) (*en banc*), and *Schlup v. Delo*, 513 U.S. 298 (1995).

10 Accordingly, Petitioner's objections are **OVERRULED** and the Report and Recommendation  
11 is **ADOPTED**. Respondents' motion to dismiss is **GRANTED**. The petition is **DISMISSED** as time  
12 barred. Certificate of appealability is **DENIED**.

13 **IT IS SO ORDERED.**

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15 DATED: February 23, 2012

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HON. DANA M. SABRAW  
United States District Judge

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